Supreme Court, U.S.
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No. 94-1533

In The

Supreme Court of the United States

October Term, 1994

DEBORAH L. FLOYD,

Petitioner,

v.

COLLIN COUNTY COMMUNITY COLLEGE DISTRICT, COLLIN COUNTY COMMUNITY COLLEGE, JOHN ANTHONY, COLLIN COUNTY COMMUNITY COLLEGE DISTRICT BOARD OF TRUSTEES, AND TRUSTEES CAREY COX, MARGARET F. REYNOLDS, GLENN W. JUSTICE, TINO TRUJILLO, SUE WILLARD OLIVER, JAMES DICKSON, E.T. BOON, J.R. (BOB) COLLINS, AND GARY Z. HARRIS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Fifth Circuit erred in affirming the District Court's dismissal of Petitioner's civil rights claims under 42 U.S.C. § 1983 against the individual Respondents in their individual capacities based upon the inadequacy of Petitioner's pleading.

LIST OF PARTIES

The names of all parties appear in the caption of this case.

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DEBORAH L. FLOYD,

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Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF IN OPPOSITION

OPINIONS BELOW

Petitioner's claims were denied by the District Court and that denial was affirmed by the Court of Appeals without the issuance of an opinion by either court. Conformed copies of the Order of Affirmance by the Court of Appeals and the District Court's Final Judgment are

attached to the Petition for Writ of Certiorari as Appendices A and F, respectively. Relevant unpublished orders of the District Court signed April 2, 1992, June 2, 1992, and June 15, 1993, are attached to the Petition as Appendices B, C and D, respectively.

JURISDICTION

The Court of Appeals affirmed the District Court's judgment on November 1, 1994. Petition for Rehearing and a Suggestion for Rehearing En Banc were denied by the Court of Appeals on December 15, 1994. This Court has jurisdiction to review the judgment in this case in the Court of Appeals pursuant to 28 U.S.C. § 1254(1). The Court of Appeals had jurisdiction of this matter under 28 U.S.C. § 1291 as an appeal from a final judgment of the District Court. The District Court had jurisdiction to hear the merits of Petitioner's claims under 28 U.S.C. § 1331, 28 U.S.C. § 1332, and under the doctrine of pendent jurisdiction.

STATEMENT OF THE CASE

Deborah L. Floyd ("Floyd") brought this action against Collin County Community College District, a subdivision of the State of Texas ("District"), Collin County Community College ("College"), John Anthony, President of the College ("Anthony"), the District's Board of Trustees ("Board"), and each of the individual Trustees (herein so called) serving on the Board, claiming that alleged actions by the defendants resulted in a denial of

due process in violation of 42 U.S.C. § 1983, constituted a conspiracy to retaliate against her in violation of 42 U.S.C. § 1985(3), and gave rise to various state law claims. Floyd's Petition addresses only the federal claims against the individual defendants, Anthony and the Trustees, in their capacities as individuals.

Floyd was employed as Vice President of Student Development for the College from November 1, 1985, until July 26, 1991, when her employment with the College terminated as a consequence of the commencement of a new position she had accepted as President of Prestonsburg Community College in Prestonsburg, Kentucky. (R-294, 296-299). Floyd's Complaint alleged that in late 1989 certain administrators sought to dismiss a student. On January 3, 1990, Floyd wrote a memorandum advising against the dismissal and expressing concerns about possible violations of the Rehabilitation Act of 1973 because of the student's status. Floyd was outspoken about potential violations of the student's rights. On August 27, 1990, Floyd testified at an administrative proceeding conducted by the District, after which Anthony expressed to her his belief that her "January 3, 1990, memorandum was the student's 'entire case.' " (R-8).[1]

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[1] At page 3 of her Petition Floyd states that she seeks compensation for actions "taken in retaliation for Floyd's testimony in a hearing before the Office of Civil Rights". No such hearing is mentioned in Floyd's Complaint as a basis for her claim or otherwise. The only "hearing" alleged to have occurred is the District's August 27 administrative proceeding. The Complaint does refer to Floyd's own retaliation complaint filed with the Office of Civil Rights for the United States Department of Education which was pending at the time Floyd filed suit and with

The record indicates that sometime in September 1990 Anthony received a letter from a college staff member alleging that Floyd had made improper and possibly illegal use of college staff and faculty. Anthony made the decision to investigate these allegations and to place Floyd on administrative leave with pay during the investigation. Anthony met with Floyd and informed her of his decision. (R-294). Floyd alleges that at that meeting Anthony told her he was conducting an investigation based upon written complaints alleging that she had previously used college resources for her consulting business and had used District staff for her earlier wedding to Homer Reynolds, who was then suing her for divorce. She further alleged that she had no notice of any written complaints or their subject matter, that the sources of the complaints against her were not named, and that at no time during 1990 was Floyd confronted with any written charges or advised of any statements or names of witnesses. (R-9, 10). Floyd remained on leave until her employment terminated on July 26, 1991 (R-14).

Because of the August 31, 1991, expiration date of her current contract, Floyd was entitled under District rules to receive notice of whether her contract would be renewed before December 16, 1990. (R-7). At Floyd's request, the date for notice was extended through the end of January 1991, and on January 31, 1991, Floyd was given written notification that her contract would not be renewed. (R-10).

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respect to which the Office of Civil Rights later found no evidence of retaliation. (R-12, 13, 352, 353).

Floyd subsequently accepted employment as president of Prestonsburg Community College in Prestonsburg, Kentucky, and advised Anthony by letter that her official employment at Prestonsburg would commence on Monday, July 29, 1991. (R-296). Anthony accepted her letter as a letter of resignation. (R-298).

All defendants responded to Floyd's Complaint (R-1, *et seq.*) with a motion to dismiss filed pursuant to Rule 12(b)(6), F.R.C.P. (R-21, *et seq.*). On behalf of the individual defendants it was alleged, *inter alia*, that Floyd's conclusory allegations of conspiracy were insufficient to state a claim under Section 1983 in the absence of any pleading of operative facts upon which the claim was based, that no Section 1985(3) conspiracy claim was stated in the absence of any allegations of class-based discriminatory animus, and finally, that Floyd's allegations of denial of due process in violation of 42 U.S.C. § 1983 were inadequate because of the failure to plead violation of clearly established law and specific facts sufficient to overcome the qualified immunity defense. (R-29). In response the District Court held as to all defendants (1) that the Section 1983 conspiracy claim failed in the absence of a pleading of operative facts, since Floyd's allegations named a single conspirator without specifying what illegal acts he perpetrated (R-145, 146 [App. B-4]); and (2) that Floyd's Section 1985(3) conspiracy claim failed because of the absence of any pleading of class-based discriminatory animus (R-146 [App. B-4]). With respect to the Section 1983 due process claims against the individual defendants the District Court further held that Floyd's allegations lacked the requisite detail and specificity required by the Fifth Circuit Court of Appeals and

failed to show that the defendants could not successfully assert a defense of qualified immunity. (R-145 [App. B-3]). Consequently, Floyd was ordered to amend her pleadings within twenty days. When she failed to do so, her federal claims were dismissed. (R-163 [App. C]).

The individual defendants subsequently answered Floyd's Complaint, asserting, *inter alia*, their immunity defenses, and moved for and obtained summary judgment on the remaining state law claims. (R-376 [App. D]). While the defendants' motion for summary judgment was pending, this Court delivered its opinion in *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, ___ U.S. ___, 113 S. Ct. 1160 (1993) (hereinafter *"Leatherman"*), in which the heightened pleadings requirement required in civil rights actions by decisional law of the Court of Appeals for the Fifth Circuit was held invalid as to claims against municipalities. Based upon that decision, Floyd moved for reconsideration of the order disposing of her federal claims. In response the District Court, concurrently with its grant of summary judgment denying Floyd's state law claims, reinstated her Section 1983 due process claim against the District. It did not alter its rulings with respect to the individual claims or the conspiracy claims against the District. (R-376, 383-384 [App. D-16-18]).

REASONS FOR DENYING THE WRIT

The motions to dismiss filed on behalf of Anthony and the Trustees in response to Floyd's Complaint plainly raised their obvious defense of qualified immunity.

(R-29). With the benefit of five extensions of time (R-40, 50, 95, 105, 112) and eighty-two days to respond, Floyd made no effort to amend her Complaint to address the qualified immunity issue; nor did she take the ample opportunity to do so after her pleadings were ruled inadequate. Her due process claims against the individual defendants were dismissed as a consequence of that failure. The District Court had the opportunity to consider the adequacy of Floyd's pleadings both initially in the context of a motion to dismiss, and later, upon reconsideration, after the filing of answers and a motion for summary judgment. Without regard to the procedural context in which it occurred, the dismissal of Floyd's due process claim against the individuals because of her inadequate pleadings comported fully with the purpose and intended benefit of qualified immunity. The Court of Appeals' affirmance of the District Court's judgment without opinion sets no precedent in conflict with any decision of this Court or with another court of appeals. The writ should be denied because there are no "special and important reasons" for granting. Supreme Court Rule 10.1.

I. Qualified Immunity and Pleading Requirements.

The Fifth Circuit Court of Appeals saw the adoption of a "heightened pleading requirement" as a necessary adjunct to the doctrine of qualified immunity. *Elliott v. Perez*, 751 F.2d 1472, 1473 (5th Cir. 1985). Government officials are entitled to qualified immunity "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person

would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738 (1982). Qualified immunity is generally provided to government officials "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." *Anderson v. Creighton*, 483 U.S. 635, 638, 107 S. Ct. 3034, 3038 (1987). As expressed in *Malley v. Briggs*, 475 U.S. 335, 106 S. Ct. 1092 (1986), qualified immunity protects "all but the plainly incompetent or those who knowingly violate the law." 475 U.S. at 341, 106 S. Ct. at 1096.

Operation of the standard for qualified immunity depends upon the level of generality employed in determining what law or rights are "clearly established." *Anderson v. Creighton* noted the example of the right to due process of law being quite clearly established, as a consequence of which any action which violates due process could be said to violate a clearly established right no matter how unclear it might be that the particular action was, in fact, a violation. 483 U.S. at 639, 107 S. Ct. at 3039. If, however, the test of "clearly established law" were to be applied at this level of generality, plaintiffs would be able to convert the rule of qualified immunity into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights. *Id.* As a consequence, a right must be "clearly established" in a more particularized sense: "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." 483 U.S. at 640, 107 S. Ct. at 3039. In other words, a plaintiff must not only allege the violation of a constitutional right, but also show that the illegality of the challenged conduct was

clearly established in factual circumstances closely analogous to those of the claim presented. *Richardson v. Oldham*, 12 F.3d 1373, 1381 (5th Cir. 1994). Unless the plaintiff's pleadings allege that the defendant reasonably should have known that his particular action violated clearly established federal law, the defendant should prevail. *Brown v. Glossip*, 878 F.2d 871, 874 (5th Cir. 1989).

In adopting a heightened pleading requirement the Fifth Circuit was influenced by the analysis in *Harlow v. Fitzgerald*, 457 U.S. 821, 102 S. Ct. 2727 (1982), of the reasons for providing qualified immunity to public officials and the revision of the doctrine by that decision made necessary to afford the protections the doctrine was intended to provide. *Harlow* provided a retrospective indicating that the doctrine of qualified immunity had been adopted as a balance between the need for a remedy in the event of an abuse of office on the one hand, and the personal and public time and expense involved in defending claims without merit on the other. This Court observed, " . . . [I]t cannot be disputed seriously that claims frequently run against the innocent as well as the guilty – at a cost not only to the defendant officials, but to society as a whole. The social costs include the expenses of litigation, the diversion of official energy from pressing public issues, and the deterrence of able citizens from acceptance of public office." 457 U.S. at 814, 102 S. Ct. at 2736 [citations omitted]. It was further observed that in initially establishing qualified immunity for public officials there had been reliance on the assumption that the standard drawn would permit insubstantial lawsuits to be quickly terminated. *Id.*

Unfortunately, however, qualified immunity, as it existed before *Harlow*, involved both objective and subjective elements, the subjective element being the malicious intentions (or conversely, the good faith) of the defendant. It was observed that litigation of the issue of intent, a factual issue often requiring a jury trial, resulted in substantial cost, distracted officials from their governmental duties, inhibited discretionary action, and deterred able people from public service. A further problem was that examination of subjective motivation could require broad ranging discovery and numerous depositions disruptive of effective government. 457 U.S. 816, 817; 102 S. Ct. 2737, 2736.

In keeping with the intended purpose of the doctrine of qualified immunity, this Court eliminated the subjective element from the qualified immunity defense and reformulated that defense so that it would be available to government officials so long as their conduct did not violate clearly established statutory or constitutional rights of which a reasonable person would have known. 457 U.S. 818, 102 S. Ct. 2738. Further, the existence of qualified immunity could be determined by the judge, and until that issue was resolved, discovery should not be allowed. *Id.*

From *Harlow* the Fifth Circuit concluded, "Whether the official's immunity is absolute or qualified, allowing any but perhaps the most preliminary proceedings on the immunity-barred claim runs squarely counter to the doctrine's basic protective purpose: that officials be free to exercise their duties and functions without fear of having their attentions distracted by the subsequent claims of unhappy or unsuccessful litigants." 751 F.2d at 1478. And

it was to that end that the heightened standard of pleading was imposed by *Elliott v. Perez*.

Shortly after *Elliott v. Perez* was announced, its analysis of the underlying rationale for qualified immunity and the decision to take special measures to assure its benefits was reinforced by *Mitchell v. Forsyth*, 472 U.S. 511, 105 S. Ct. 2806 (1985), which determined that an order denying a plea of qualified immunity was an appealable order. This Court observed that a defendant asserting qualified immunity is entitled to dismissal before the commencement of discovery unless the plaintiff's allegations state a claim of violation of clearly established law. Under *Harlow* there is an entitlement not to stand trial where qualified immunity exists. 472 U.S. 526, 105 S. Ct. 2815. "The entitlement is an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." *Id.* Accordingly, the issue of qualified immunity was one too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the entirety of the case has been adjudicated. 472 U.S. 525, 105 S. Ct. 2814.

The Fifth Circuit has not been alone in adopting standards which aid in bringing about the intended benefit of qualified immunity, freeing public officials from the time and expense of protracted litigation. A majority of the other courts of appeals have adopted such standards. *Krohn v. United States*, 742 F.2d 24, 31 (1st Cir. 1984); *Dunbar Corp. v. Lindsey*, 905 F.2d 754, 764 (4th Cir. 1990); *Chapman v. City of Detroit*, 808 F.2d 459, 465 (6th Cir. 1986); *Brown v. Frey*, 889 F.2d 159, 170 (8th Cir. 1989), *cert. denied*,

494 U.S. 1088, 110 S. Ct. 1156 (1990); *Branch v. Tunnell*, 937 F.2d 1382, 1387 (9th Cir. 1991); *Sawyer v. County of Creek*, 908 F.2d 663, 667 (10th Cir. 1990); *Oladeinde v. City of Birmingham*, 963 F.2d 1481, 1485 (11th Cir. 1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 1586 (1993); *Hunter v. District of Columbia*, 943 F.2d 69, 75-76 (D.C. Cir. 1991).

Since *Leatherman*, in which this Court disapproved the Fifth Circuit's extension of the heightened pleadings requirement to suits against municipalities while expressly reserving review of the issue in civil rights suits against public officials in their individual capacities, courts of appeals have continued to apply heightened standards in reviewing claims against individuals. *Ramirez v. Oklahoma Dep't of Mental Health*, 41 F.3d 584, 593 (10th Cir. 1994); *Branch v. Tunnell*, 14 F.3d 449, 456 (9th Cir.), *cert. denied*, ___ U.S. ___, 114 S. Ct. 2704 (1994); *Kimberlin v. Quinlan*, 6 F.3d 789, 794 (D.C. Cir. 1993), *reh'g denied*, 17 F.3d 1525 (D.C. Cir. 1994) (per curiam), *cert. granted*, ___ U.S. ___, 115 S. Ct. 929 (1995); *Schultea v. Wood*, 47 F.3d 1427 (5th Cir. 1995) (en banc) (1995 WL 98234). *Contra Frey v. City of Herculaneum*, 44 F.3d 667, 671 (8th Cir. 1995); *Dell v. Board of Education*, 32 F.3d 1053, 1064-65 (7th Cir. 1994).

From the inception of the heightened pleadings requirement in the Fifth Circuit its conflict with the concept of "notice pleading" was recognized. *Elliott v. Perez*, 751 F.2d 1472, 1483 (5th Cir. 1985) (Higginbotham, J., concurring). Perhaps spurred by this Court's emphasis on that conflict in *Leatherman*, 113 S. Ct. 1163, the Fifth Circuit in *Schultea v. Wood, supra*, developed a new analysis to supplant that found in *Elliott v. Perez*. As a starting point, *Schultea* suggests that in reality and as applied the "heightened pleading"

requirement established by *Elliott* is not all that "heightened." Rather, that court's "insistence on pleading with particularity translated to no more than an insistence that the complaint not plead conclusions." *Schultea* at ___. Under most post-*Elliott* cases in the Fifth Circuit a simple insistence that the plaintiffs plead more than conclusions would not have changed the result. *Schultea* at ___ (cases cited at n.2). Nevertheless, there was apparent concern that *Elliott* could only be regarded as a judicial amendment to Rule 9(b), F.R.A.P., having added civil rights claims to those types of cases requiring pleading with particularity in the original complaint. Accordingly, the Fifth Circuit has changed the document in which heightened pleading must appear from the original complaint to a reply, a pleading which the plaintiff can be ordered to file in response to a pleaded defense of qualified immunity, and a pleading to which Rule 8(a)(2), F.R.A.P. (requiring only a "short and plain statement of the claim") does not apply. *Schultea* at ___. Consistent with the intended benefit of qualified immunity, under *Schultea*, the district court "need not allow any discovery unless it finds that plaintiff has supported his claim with sufficient precision and factual specificity to raise a genuine issue as to the illegality of the defendant's conduct at the time of the alleged acts." *Id.*[2]

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[2] It appears that the Fifth Circuit panel which affirmed the dismissal of Floyd's claims saw no potential that *Schultea* would present grounds for reinstatement of Floyd's claims. Rehearing en banc had been granted in *Schultea* on the court's own motion on August 26, 1994, *Schultea v. Wood*, 27 F.3d 1112, 1120 (5th Cir. 1994), and was pending on rehearing both at the time the judgment in the present case was affirmed on November 1, 1994, and at the time rehearing was denied on December 15, 1994.

Qualified immunity is the judicial doctrine which underlies and justifies the imposition of a requirement for more particularized and non-conclusory pleading in certain cases. That doctrine was not an issue in cases such as *Leatherman* in which the defendant was a municipality which did not enjoy immunity from suit, either absolute or qualified. 113 S. Ct. at 1162. That lack of justification combined with this Court's conclusion that it was "impossible to square" any heightened pleadings standard with "notice pleading" under the Federal Rules appears to have made it a simple matter to cut off any extension of the heightened pleadings requirement to municipalities. 113 S. Ct. at 1163. That is not the situation here, however; nor is it the situation in *Kimberlin v. Quinlan, supra,* which this Court presently has under consideration. In this case and *Kimberlin* the defendants are individual public officials who are entitled to all of the benefits of qualified immunity, including freedom from the time and expense of protracted litigation. That is a substantive right with which federal rules should not interfere. 28 U.S.C. § 2072(b). To the extent of any conflict with federal rules of pleading, specifically, Rule 8(a)(2), F.R.A.P., the rules should yield to the qualified immunity defense. *Schultea v. Wood, supra,* (Jones, J., concurring).

II. Floyd's Conclusory Pleadings Fall Short.

As the heightened standard of pleading was first articulated in the Fifth Circuit, "[T]he plaintiff's complaint [must] state with factual detail and particularity the basis for the claim which necessarily includes why the defendant-official cannot successfully maintain the

defense of immunity." *Elliott v. Perez*, 751 F.2d 1472, 1473 (5th Cir. 1985). This means the plaintiff's allegations must state a claim of violation of clearly established law, pleading facts with particularity. Conclusory allegations and technical buzz words are inadequate. *Jacquez v. Procunier*, 801 F.2d 789, 791, 792 (5th Cir. 1986). Complaints containing conclusory allegations without reference to material facts will not survive motions to dismiss. *Geter v. Fortenberry*, 849 F.2d 1550, 1553 (5th Cir. 1988). The pleadings must sufficiently allege that the defendant reasonably should have known that his particular actions violated clearly established federal law. *Brown v. Glossip*, 878 F.2d 871, 874 (5th Cir. 1989).

Floyd's efforts to plead a Section 1983 claim clearly fail under the heightened pleadings requirement. They likewise fall short of the "precision and factual specificity" required for a reply under *Schultea*. Further, given the pleadings necessary to overcome qualified immunity, Floyd's efforts fail under the minimal notice requirements of Rule 8(a)(2), F.R.A.P. Floyd simply pleads in "blunderbuss fashion" conclusory allegations of rights, privileges, immunities and due process which bring to mind this Court's concern that "Plaintiffs would be able to convert the rule of qualified immunity that our cases plainly establish into a rule of virtually unqualified liability simply by alleging violation of extremely abstract rights." *Anderson v. Creighton*, 483 U.S. 635, 639, 107 S. Ct. 3034, 3039 (1987).

Floyd was obligated to overcome the readily apparent defense of qualified immunity in this case by pleading violation of clearly established federal law under circumstances in which the defendants reasonably should

have known that their particular actions violated that law. Here Floyd's pleadings do not make even a passing attempt to identify with any particularity the law alleged to be violated or the right asserted. Review of the passages from Floyd's pleadings in which Floyd purports to describe the rights violated confirms the impossibility of determining from them what law is said to have been broken, much less whether the defendants' conduct violated clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2739 (1982); *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 2815 (1985). The following excerpts illustrate:

> " * * * [T]his action . . . is commenced by Plaintiff to recover damages for injury to her person and property because of the deprivation of her rights and privileges in furtherance of a conspiracy mentioned in 42 U.S.C. § 1985, . . . and to redress the deprivation, under color of . . . law, . . . of rights, privileges or immunities secured by the constitution of the United States or act of Congress providing for equal rights of citizens or of all persons of the United States and to recover damage or secure equitable relief under 42 U.S.C. § 1983 providing for the protection of civil rights, ... "

(R-5).

> "Action of President Anthony, certain staff members and [District] Board Trustees was taken: . . . (4) with the intent and effect of acting under color of state statutes, [District] rules and regulations to subject Dr. Floyd to the deprivation of her rights, privileges and immunities secured by the constitution and laws of the

> United States and Texas, within the meaning and prohibition of 42 U.S.C. § 1983 and § 1985."

(R-11, 12).

> "Defendants have denied Plaintiff due process under color of state statute and [the District's] rules and regulations, among other things, in violation of 42 U.S.C. § 1983."

(R-12).

Nothing in the foregoing pleadings identifies the constitutionally protected right or privilege of which Floyd was deprived or of the manner in which she was denied due process.

In sum, Floyd's pleadings not only fail to plead violation of clearly established statutory or constitutional rights of which a reasonable person would have known, they fail to identify *any* constitutional right alleged to have been violated. *See, Siegert v. Gilley*, ___ U.S. ___, 111 S. Ct. 1789, 1794 (1991). As observed in *Siegert*, 111 S. Ct. at 1793, 1794, one of the purposes of immunity is to spare a defendant not only unwarranted liability, but unwarranted demands customarily imposed upon those defending a long drawn out lawsuit. The entitlement of defendants is immunity from suit and not a mere defense to liability. This case, like *Siegert*, demonstrates the desirability of that approach to the claim of qualified immunity.

CONCLUSION

A heightened pleading requirement or some similar burden must be imposed on plaintiffs who seek to impose civil rights liability on public officials in their individual capacities. Otherwise the rule of qualified immunity will be converted into a rule of virtually unqualified liability on the part of these officials. The individual defendants and respondents in this case were entitled to and properly received the benefits of qualified immunity. The Petition should be denied.

Respectfully submitted,

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